United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 10,586.

United States of America

Appellee,

versus

Richard Hayes Hinton,

Appellant.

Appealed From The United States District Court For The District of South Carolina, at Columbia. Charles E. Simons, Jr., District Judge.

(Argued December 8, 1966. Decided January 6, 1967.)

Before Haynsworth, Chief Judge, and Winter and Craven, Circuit Judges.

Edwin M. Young and Vernon F. Daughtridge for Appellant, and Charles S. Porter, Jr., Assistant United States Attorney, (Terrell L. Glenn, United States Attorney, on brief) for Appellee.

Per Curiam:

This appeal presents the identical question considered by the Court in United States v. Worley, 4 Cir. F.2d (decided November 3, 1966.) We affirm for the reasons stated by us in Worley.

Affirmed.

United States Court of Appeals

FOR THE FOURTH CIRCUIT

NOS. 10,622 AND 10,624

UNITED STATES OF AMERICA
APPELLEE,

versus

BUFORD WILSON WORLEY AND A. C. BENNETT,
APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, AT COLUMBIA.
CHARLES E. SIMONS, JR., DISTRICT JUDGE

(Argued October 31, 1966. Decided November 3, 1966.)

BEFORE HAYNSWORTH, CHIEF JUDGE, AND SOBELOFF AND CRAVEN, CIRCUIT JUDGES

N. Welch Morrisette, Jr. and Charles B. Bowers for Appellants, and Charles S. Porter, Jr., Assistant United States Attorney, (Terrell L. Glenn, United States Attorney, on Brief) for Appellees.

PER CURIAM:

The only question presented by this appeal is whether on the facts of this case the District Court committed reversible error in permitting the United States to offer in evidence typed transcriptions of recorded telephone conversations.

A special agent of the Alcohol and Tobacco Unit of the Treasury Department testified that he identified Worley and Bennett as the persons talking, that he recorded the conversations, that he had the recording,[1] that transcriptions has been made of them, and that he had compared the transcriptions to the recordings and that they were the same. Upon this foundation the United States offered the transcripts into evidence.

Although the basis for appellant's objection in the Court below is not entirely clear in the record, we assume for purposes of this decision, as contended for by appellants, that the ground for the objection was that the tape recordings per se were the "best evidence" and that the failure of the United States to offer the recordings left a fatal gap in establishing authenticity of the transcriptions.

We think appellant's position is without merit because the record shows that before the transcriptions were received it was shown that the recordings were available and the District Judge indicated willingness to order them to be produced, in words as follows: "Well, he says he has the recording available here. Would you rather have the recording?".

Even after notice of appeal, counsel for the United States in open court offered to make the recordings available to counsel for Appellants Bennett and Worley for the purpose of comparison with the transcripts introduced. It does not appear that the offer was ever accepted, and it is not asserted before us that the transcripts used varied from the typed recordings. Compare United States vs. Hall, 342 F. 2d 849 (4th Cir., 1965).

Affirmed.

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1. They were in the Office of the United States Attorney and readily available.

In The United States District Court

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CRIMINAL ACTION NO. AC-1298

UNITED STATES OF AMERICA

versus

RICHARD HAYES HINTON, BUFORD WILSON WORLEY, AND A. C. BENNETT

JOURNAL ENTRY OF JUDGMENT

Sentence as to Richard Hayes Hinton on March 18, 1966.

Committed to the custody of the attorney general for three years on count No.2. On count No.3 committed to the custody of the attorney general for three years. This sentence suspended and placed on probabtion for five years to commence upon release from sentence on count No. 2. He is fined $1,500.00 as a special condition of this probation. On count No. 1 imposition of sentence suspended and placed on probation for five years to run concurrently with sentence on count No. 3.

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 10,586

UNITED STATES OF AMERICA,

Appellee,

vs.

RICHARD HAYES HINTON,

Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia.

Upon the petition of the appellant by his counsel, and for cause shown,

It is ordered that the issurance of a certified copy of the judgment in lieu of a mandate be, and it is hereby, stayed pending application of the appellant in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application is filed in the said Supreme Court within the time prescribed by law.

CLEMENT F. HAYNSWORTH, JR.
Chief Judge, Fourth Circuit.

FILED
JAN 18 1967
MAURICE S. DEAN
CLERK

A true copy,
Teste:

Maurice S. Dean, Clerk,
U. S. Court of Appeals for the
Fourth Circuit
By Margaret L. Davis,
Deputy Clerk